



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201212021

DEC 27 2011

Uniform Issue List: 408.03-00

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XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

T:EP:RA:T3

Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXX
Decedent	= XXXXXXXXXXXXXXXXXXXX
Financial Institution H	= XXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Court B	= XXXXXXXXXXXXXXXXXXXX
State S	= XXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXX
Date 4	= XXXXXXXXXXXXXXXXXXXX
Date 5	= XXXXXXXXXXXXXXXXXXXX
Date 6	= XXXXXXXXXXXXXXXXXXXX
Year 1	= XXXXXXXXXXXXXXXXXXXX

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Page 2

201212021

Dear XXXXXXXXXX:

This letter is in response to your request for a letter ruling dated March 10, 2011, as supplemented by additional correspondence dated October 6, 2011, submitted by your authorized representative on your behalf, in which you request rulings under section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Decedent, whose date of birth was Date 1 died on Date 2, not having attained age 70 1/2. Decedent was survived by her husband, Taxpayer A whose date of birth is Date 3. At the time of her death, Decedent maintained an individual retirement annuity, IRA X, with Financial Institution H.

On Date 4, Decedent designated Taxpayer A as beneficiary of IRA X.

In Year 1, Decedent requested Financial Institution H to change ownership of IRA X from a custodial arrangement whereby the custodian held legal ownership of the IRA for the benefit of the Decedent to direct ownership of IRA X by Decedent. The ownership change became effective on Date 5. Although not requested by the decedent, Financial Institution H also changed the beneficiary of IRA X to Decedent's estate along with the change of ownership. Decedent was notified of this discrepancy by her financial advisor and new beneficiary designation forms were mailed to her renaming Taxpayer A as beneficiary. However, she became ill and died prior to correcting the beneficiary designation forms.

Decedent's Last Will and Testament (Will), designates Taxpayer A, her husband, as the Personal Representative of her estate. Item VIII of the Will gives the Personal Representative broad powers to exercise in the management of Decedent's Estate including "without being limited in any way by the specific grants of power made, and without the necessity of a court order." Taxpayer A was appointed as Personal Representative of Decedent's estate by Court B on Date 6.

As Decedent's surviving spouse Taxpayer A intends to establish an IRA in his own name and wishes IRA X to be transferred directly to his IRA account in a trustee-to-trustee transfer. Documentation submitted shows that Decedent was the owner of IRA X at the time of her death and that Taxpayer A, Decedent's surviving spouse, was designated as the Personal Representative and the sole beneficiary of her estate.

Based on the facts and representations, you request the following rulings:

1. That Taxpayer A will be treated for purposes of section 408(d)(3) of the Code, as the payee or distributee of the proceeds from IRA X;

2. That IRA X will not be treated as an inherited IRA within the meaning of section 408(d)(3) of the Code with respect to Executor A;
3. That Taxpayer A is eligible to roll over the proceeds from IRA X to an individual retirement account set up and maintained in his own name, pursuant to section 408(d)(3)(A)(i) of the Code; as long as the rollover occurs no later than the 60th day the proceeds are received by Taxpayer A in his capacity as Personal Representative of Decedent's estate;
4. That Taxpayer A will not be required to include in gross income for federal income tax purposes, for the year in which the distribution of IRA X is made, any portion of the proceeds distributed from IRA X which are timely rolled over to an IRA set up and maintained in Taxpayer A's name.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B), the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall

be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to Code sections 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 Question and Answer 5 of the regulations, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from a deceased spouse's IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

Generally, if the proceeds of a decedent's IRA pass through a third party, e.g. a trust or an estate, and then are distributed to the decedent's surviving spouse, the surviving spouse shall be treated as having received the IRA proceeds from the third party and not from the decedent. Thus, generally a surviving spouse shall not be eligible to roll over the distributed IRA proceeds into his or her own IRA. However, the general rule will not apply in a case where the surviving spouse as executor of the decedent's estate has sole authority and discretion to pay the IRA proceeds to himself. In such a case, the surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in his name.

In the present case, Decedent's interest in IRA X passed to her estate. Taxpayer A is both the Executor of the estate and its sole beneficiary with the right to direct any and all amounts from the estate without restriction. Under this set of circumstances, no third party can prevent Taxpayer A from receiving the proceeds of IRA X and from rolling over, or transferring, by means of a trustee-to-trustee transfer, the full amount of IRA X into another IRA set up and maintained in the name of Taxpayer A.

Under this set of circumstances, the general rule set forth above will not apply. Therefore, with respect to your ruling requests, we conclude that:

201212021

1. Executor A, as surviving spouse and sole beneficiary of Decedent's estate, will be treated for purposes of section 408(d)(3) of the Code, as the payee or distributee of the proceeds from IRA X;
2. IRA X will not be treated as an inherited IRA within the meaning of section 408(d)(3) of the Code with respect to Executor A;
3. Taxpayer A is eligible to roll over the proceeds from IRA X to an individual retirement account set up and maintained in his own name, pursuant to section 408(d)(3)(A)(i) of the Code; as long as the rollover occurs no later than the 60th day after the proceeds are received by Taxpayer A in his capacity as Personal Representative of Decedent's estate;
4. That Taxpayer A will not be required to include in gross income for federal income tax purposes, for the year in which the distribution of IRA X is made, any portion of the proceeds distributed from IRA X which are timely rolled over to an IRA set up and maintained in Executor A's name.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX (ID XXX-XXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,



Laura B. Warshawsky, Manager
Employee Plans, Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose